



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
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July 18, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6006 85

Gregory Geist, Director
Clackamas Water Environment Services
150 Beaver Creek Rd., Ste. 200
Oregon City, OR 97045-4302

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-NWR-2023-060

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Clackamas Water Environment Services (WES) a civil penalty of \$1,725 for violating the *E. Coli* bacteria limit set forth in the National Pollutant Discharge Elimination System (NPDES) permit (Permit #100962) issued to the Hoodland Sewage Treatment Plant in Welches. Specifically, on February 3, 2023, Respondent reported an *E. coli* sample of greater than 2,420 organisms per 100 mL as a result of an inoperative disinfection system.

DEQ issued this penalty because high levels of bacteria in wastewater discharges pose a significant threat to public health. In addition, DEQ is concerned by WES's continued non-compliance. WES has committed multiple violations at the Boring and Hoodland sewage treatment plants over the last ten years, addressed by DEQ through four formal enforcement actions (case numbers: WQ/M-NWR-2014-053, WQ/M-NWR-2015-155, WQ/M-NWR-2018-078, and WQ/M-NWR-2022-052). However, DEQ appreciates WES's recent efforts to ensure that the violation will not be repeated by implementing additional training, modifying its standard operating procedure to include testing of chlorine residual after system maintenance activities, and its intention to purchase and install a flow detection sensor on the pump skid for each pump. DEQ considered these efforts in calculating the civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell", written in a cursive style.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Randall Bailey, DEQ NWR
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
CLACKAMAS WATER ENVIRONMENT) NOTICE OF CIVIL PENALTY
SERVICES) ASSESSMENT AND ORDER
Respondent.) CASE NO. WQ/M-NWR-2023-060

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

II. FINDINGS OF FACT

- Respondent has coverage under National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 100962 (the Permit) for wastewater discharges from the Hoodland Sewage Treatment Plant (STP) located at 24596 E. Bright Ave, Welches, OR (the Facility).
- Pursuant to Schedule A, Condition 1 of the Permit, *E.coli* bacteria discharges from the Facility may not exceed 126 organisms per 100 mL monthly geometric mean. No single sample may exceed 406 organisms per 100 mL.
- On February 3, 2023, Respondent notified DEQ that on the evening of February 2, 2023, chlorine dosing at the Facility was interrupted following routine maintenance. The error was not discovered until the following morning. As a result in the disruption in the disinfection system, Respondent collected an *E.Coli* sample on February 3, 2023, that showed *E.Coli* levels at greater than 2,420 organisms per 100 mL.
- Respondent has since provided its employees with additional training on proper system operation and maintenance to ensure the chlorine valve is open following maintenance activities. Respondent has also modified its standard operating procedure to include testing of chlorine residual after system maintenance activities and prior to the operator leaving the facility for the day.

1 Additionally, Respondent intends to purchase and install a flow detection sensor on the pump skid for
2 each pump and program a system alarm to notify the operator of lack of flow.

3 5. Pursuant to Schedule F, Condition A1 of the Permit, Respondent must comply with all
4 conditions of the Permit. Failure to comply with any permit condition is a violation of ORS 468B.025.

5 6. Pursuant to ORS 468B.025(2), no person shall violate the conditions of any waste discharge
6 permit issued under ORS 468B.050.

7 III. CONCLUSIONS

8 1. Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the *E.coli*
9 bacteria limit set forth in the Permit. Specifically, on February 3, 2023, Respondent reported an *E.coli*
10 sample of greater than 2,420 organisms per 100 mL as a result of an inoperative disinfection system. This
11 is a Class I violation according to OAR 340-012-0055(1)(k). DEQ hereby assesses a \$1,725 civil penalty
12 for this violation.

13 IV. ORDER TO PAY CIVIL PENALTY

14 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
15 hereby ORDERED TO:

16 1. Pay a total civil penalty of \$1,725. The determination of the civil penalty is attached as Exhibit
17 1 and is incorporated as part of this Notice.

18 If you do not file a request for hearing as set forth in Section V below, your check or money
19 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ,**
20 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

21 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

22 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
23 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
24 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
25 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
26 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
27 further information about requests for hearing.) You must send your request to: **DEQ, Office of**

1 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
2 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
3 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
4 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
5 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
6 you may represent yourself. If you are a corporation, partnership, limited liability company,
7 unincorporated association, trust or government body, you must be represented by an attorney or a duly
8 authorized representative, as set forth in OAR 137-003-0555.

9 Active duty Service members have a right to stay proceedings under the federal Service
10 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
11 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
12 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
13 Department does not have a toll free telephone number.

14 If you fail to file a timely request for hearing, the Notice will become a final order by default
15 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
16 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
17 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
18 the relevant portions of its files, including information submitted by you, as the record for purposes of
19 proving a prima facie case.

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21
22
23 7/13/2023
24 Date


23 
24 Kieran O'Donnell, Manager
25 Office of Compliance and Enforcement
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EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Respondent violated ORS 468B.025(2) and Schedule A of the Permit by exceeding the *E.Coli* bacteria limit set forth in the Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(a)(C)(i) because Respondent's effluent was diluted by a factor of 10 or more by the receiving stream.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$750 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(i) because Respondent's facility has a permitted flow of less than two million gallons per day.

"P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives an initial value of 18 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had five Class I violations, six Class II violations, and five Class III violations in Case #WQ/M-NWR-2014-053; two Class I violations in Case #WQ/M-NWR-2015-155; three Class I violations in Case #WQ/M-NWR-2018-078; and four Class I violations in Case #WQ/M-NWR-2022-052. The final "P" value is reduced to 10 because, according to OAR 340-012-0145(2)(b), the value of "P" will not exceed 10.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to ensure the chlorine valve was reopened following maintenance activities, Respondent failed to take reasonable care to avoid the foreseeable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because the Respondent made reasonable efforts to ensure the violation would not be repeated. Specifically, Respondent has provided its employees with additional training to ensure the valve is open following maintenance activities, modified its standard operating procedure to include testing of chlorine residual after system maintenance activities and prior to leaving the facility for the day, intends to purchase and install a flow detection sensor on the pump skid for each pump, and will program a system alarm to notify the operator of lack of flow.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (10 + 0 + 0 + 4 + -1)] + \0
 $= \$750 + [\$75 \times 13] + \$0$
 $= \$750 + \$975 + \$0$
 $= \$1,725$